

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WESLEY ARCENEUX, SAMUEL §
BARNHARDT; ADAM BELLINGER; §
RAMIRO BERONES; JOSE §
BENITEZ; ETHAN CALLAHAN; §
DAMON HODGE; WILLIS §
HOLMAN; DWAYNE JONES; §
HERMAN MCCORD; IKE MILLER; §
RANDY REYNA; LADERRICK §
STILLS; SUNSHINE THORNTON; §
WILLIAM VALK; CANDACE §
WEAVER; AND JOHN YARBROUGH §

Plaintiffs

v.

FITNESS CONNECTION OPTION §
HOLDINGS, LLC; TITAN FITNESS, §
LLC; TITAN FITNESS HOLDINGS, §
LLC; TITAN FITNESS-DUBLIN, §
LLC; TITAN FITNESS-GBC, LLC; §
TITAN FITNESS-SA, LLC; TITAN §
FITNESS NC, LLC; AND TITAN §
FITNESS TEXAS, LLC §

Defendants

DOCKET NUMBER:

COMPLAINT

COLLECTIVE ACTION FOR CLAIMS
UNDER FAIR LABOR STANDARDS
ACT [29 U.S.C. § 201 ET SEQ.]

STATE OF TEXAS

COMPLAINT

Plaintiffs, WESLEY ARCENEUX, SAMUEL BARNHARDT, ADAM BELLINGER,
RAMIRO BERRONES, JOSE BENITEZ, ETHAN CALLAHAN, DAMON HODGE, WILLIS
HOLMAN, DWAYNE JONES, HERMAN MCCORD, IKE MILLER, RANDY REYNA,
LADERRICK STILLS, SUNSHINE THORNTON, WILLIAM VALK, CANDACE WEAVER,
AND JOHN YARBROUGH (collectively "Plaintiffs"), on behalf of themselves and all similarly
situated as specifically referenced herein, allege as follows:

I. JURISDICTION

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2 1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
3 1331 and 1343(3) as the controversy arises under the laws of the United States. Specifically, the
4 claim arises under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et seq.* ("FLSA").

II. VENUE

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7 2. Venue is proper pursuant to 28 U.S.C. §1391(b) because a substantial part of the
8 events or omissions giving rise to this claim occurred in the Houston Division.

9
10 3. Plaintiffs are and/or formerly were General Managers, Assistant General Managers
11 and Fitness Managers (hereinafter collectively "Managers"), and Sales Counselors, Fitness Directors
12 and/or Personal Trainers (hereinafter collectively "Trainers") who have worked unpaid overtime
13 hours for Defendants, **FITNESS CONNECTION OPTION HOLDINGS, LLC; TITAN**
14 **FITNESS, LLC; TITAN FITNESS HOLDINGS, LLC; TITAN FITNESS-DUBLIN, LLC;**
15 **TITAN FITNESS-GBC, LLC; TITAN FITNESS-SA, LLC; TITAN FITNESS NC, LLC; AND**
16 **TITAN FITNESS TEXAS, LLC** (hereinafter collectively "**FITNESS CONNECTION**"), in the
17 operation and maintenance of the Defendants' health and fitness clubs.
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20 4. Plaintiffs have worked for the Defendants and are informed and believe that the
21 Defendants own and operate health and fitness clubs in the States of Texas and North Carolina.

22 5. Plaintiffs bring these claims individually and as a collective action under the Fair
23 Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), on behalf of Managers and Trainers, none of
24 which positions are exempt from the overtime provisions of the FLSA (hereinafter "FLSA Collective
25 Members").
26

27 6. Plaintiffs allege, on behalf of themselves and all similarly situated Managers and
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1 Trainers, that the Defendants unlawfully classified them as exempt from overtime payments under
2 Federal and State laws and/or failed and refused to pay overtime payments to Plaintiffs and the
3 proposed FLSA Collective Members for all overtime worked, notwithstanding that the Plaintiffs and
4 the proposed FLSA Collective Members are not and were not exempt and are and have been entitled
5 to overtime pay for all overtime worked, and further that the Defendants failed to record and
6 maintain time records of hours worked by the Managers and Trainers as required by law.
7

8
9 7. Plaintiffs allege that the Defendants' practices violated and continue to violate the
10 FLSA, 29 U.S.C. §§201, 27, *et seq.* Plaintiffs further allege that the collective action claims are for
11 overtime compensation, punitive damages, liquidated damages, interest, and attorneys' fees and
12 costs under the FLSA 29 U.S.C. §207 and 216(b).
13

14 8. Plaintiffs allege that the Defendants' acts were in accordance with and represent their
15 official policies or those whose edicts or acts may fairly be said to represent the official policies of
16 the Defendants.
17

18 9. Plaintiffs allege that the Defendants willfully committed, ordered, directed,
19 supervised, allowed, planned, ratified, concealed, organized, or otherwise participated in the
20 unlawful acts complained of herein.
21

22 III. PARTIES

23 A. Plaintiffs

24 10. Plaintiff, **WESLEY ARCENEUX, JR.**, is a resident of Spring, Texas, and was
25 employed by FITNESS CONNECTION from on or about April 13, 2015 to on or about May 15,
26 2016, at a FITNESS CONNECTION located in the State of Texas as an Assistant General Manager.
27 As an Assistant General Manager, Plaintiff regularly worked in excess of forty (40) hours per week
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1 and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
2 compensation to which he was entitled for the hours worked in excess of forty (40) hours per week
3 and/or eight (8) hours per day. Also Plaintiff was asked to clock out for lunch and asked to stay and
4 still work while off the clock. Plaintiff was regularly required to have actual hours worked corrected
5 to show he worked less hours without signing in or out or any documentation agreeing to the change
6 in actual hours worked by Plaintiff. Plaintiff was also asked to work on non scheduled days while
7 off the clock and not receive any compensation for the hours he actually worked.
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10 11. Plaintiff, **SAMUEL BARNHARDT**, is a resident of Wilmington, North Carolina,
11 and was employed by FITNESS CONNECTION from on or about March, 2013 to on or about
12 March 2016, at a FITNESS CONNECTION located in the State of North Carolina as a Fitness
13 Manager. As a Fitness Manager, Plaintiff regularly worked in excess of forty (40) hours per week
14 and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
15 compensation to which he was entitled for the hours worked in excess of forty (40) hours per week
16 and/or eight (8) hours per day. Also Plaintiff was asked to clock out for lunch and asked to stay and
17 still work while off the clock. Plaintiff was regularly required to have actual hours worked corrected
18 to show he worked less hours without signing in or out or any documentation agreeing to the change
19 in actual hours worked by Plaintiff. Plaintiff was also asked to work on non scheduled days while
20 off the clock and not receive any compensation for the hours he actually worked.
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23 12. Plaintiff, **ADAM BELLINGER**, is a resident of Houston, Texas, and was employed
24 by FITNESS CONNECTION from on or about December, 2014 to on or about April, 2015, at a
25 FITNESS CONNECTION located in the State of Texas as a Fitness Manager and District Manager.
26 As a Fitness Manager and District Manager, Plaintiff regularly worked in excess of forty (40) hours
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1 per week and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
2 compensation to which he was entitled for the hours worked in excess of forty (40) hours per week
3 and/or eight (8) hours per day. Also Plaintiff was asked to clock out for lunch and asked to stay and
4 still work while off the clock. Plaintiff was regularly required to have actual hours worked corrected
5 to show he worked less hours without signing in or out or any documentation agreeing to the change
6 in actual hours worked by Plaintiff. Plaintiff was also asked to work on non scheduled days while
7 off the clock and not receive any compensation for the hours he actually worked.
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10 13 Plaintiff, **RAMIRO BERONES**, is a resident of Dallas, Texas, and was employed
11 by FITNESS CONNECTION from on or about to on or about, at a FITNESS CONNECTION
12 located in the State of Texas as an Assistant General Manager. As an Assistant General Manager,
13 Plaintiff regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but
14 failed to receive all minimum wages, including all overtime compensation to which he was entitled
15 for the hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. Also
16 Plaintiff was asked to clock out for lunch and asked to stay and still work while off the clock.
17 Plaintiff was regularly required to have actual hours worked corrected to show he worked less hours
18 without signing in or out or any documentation agreeing to the change in actual hours worked by
19 Plaintiff. Plaintiff was also asked to work on non scheduled days while off the clock and not receive
20 any compensation for the hours he actually worked.
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24 14. Plaintiff, **JOSE BENITEZ**, is a resident of Dallas, Texas, and was employed by
25 FITNESS CONNECTION from on or about June 2015 to on or about October 2015, at a FITNESS
26 CONNECTION located in Houston, Texas as an Assistant General Manager. As an Assistant
27 General Manager, Plaintiff regularly worked in excess of forty (40) hours per week and eight (8)
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1 hours per day, but failed to receive all minimum wages, including all overtime compensation to
2 which he was entitled for the hours worked in excess of forty (40) hours per week and/or eight (8)
3 hours per day. Also Plaintiff was asked to clock out for lunch and asked to stay and still work while
4 off the clock. Plaintiff was regularly required to have actual hours worked corrected to show he
5 worked less hours without signing in or out or any documentation agreeing to the change in actual
6 hours worked by Plaintiff. Plaintiff was also asked to work on non scheduled days while off the
7 clock and not receive any compensation for the hours he actually worked.
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10 15. Plaintiff, **ETHAN PETER CALLAHAN**, is a resident of Raleigh, North Carolina,
11 and is employed by FITNESS CONNECTION starting on or about November 17, 2014 at a
12 FITNESS CONNECTION located in the State of North Carolina as an Assistant General Manager
13 and Fitness Manager. As an Assistant General Manager and Fitness Manager, Plaintiff regularly
14 worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all
15 minimum wages, including all overtime compensation to which he was entitled for the hours worked
16 in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff is asked to clock
17 out for lunch and asked to stay and still work while off the clock. Plaintiff is regularly required to
18 have actual hours worked corrected to show he worked less hours without signing in or out or any
19 documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff is also asked to
20 work on non scheduled days while off the clock and not receive any compensation for the hours he
21 actually worked.
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25 16. Plaintiff, **DAMON HODGE**, is a resident of Irving, Texas, and was employed by
26 FITNESS CONNECTION from on or about March 1, 2015 to on or about September 1, 2015, at a
27 FITNESS CONNECTION located in the State of Texas as a General Manager. As a General
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1 Manager, Plaintiff regularly worked in excess of forty (40) hours per week and eight (8) hours per
2 day, but failed to receive all minimum wages, including all overtime compensation to which he was
3 entitled for the hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.
4 Also Plaintiff was asked to clock out for lunch and asked to stay and still work while off the clock.
5 Plaintiff was regularly required to have actual hours worked corrected to show he worked less hours
6 without signing in or out or any documentation agreeing to the change in actual hours worked by
7 Plaintiff. Plaintiff was also asked to work on non scheduled days while off the clock and not receive
8 any compensation for the hours he actually worked.
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11 17. Plaintiff, **WILLIS HOLMAN**, is a resident of Fort Worth, Texas, and was employed
12 by FITNESS CONNECTION from on or about August, 2014 to on or about August, 2016, at a
13 FITNESS CONNECTION located in the State of Texas as a Fitness Manager and/or District Fitness
14 Manager. As a Fitness Manager and/or District Fitness Manager, Plaintiff regularly worked in
15 excess of forty (40) hours per week and eight (8) hours per day, but failed to receive all minimum
16 wages, including all overtime compensation to which he was entitled for the hours worked in excess
17 of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff was asked to clock out for
18 lunch and asked to stay and still work while off the clock. Plaintiff was regularly required to have
19 actual hours worked corrected to show he worked less hours without signing in or out or any
20 documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff was also asked
21 to work on non scheduled days while off the clock and not receive any compensation for the hours
22 he actually worked.
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26 18. Plaintiff, **DWAYNE JONES**, is a resident of Spring, Texas, and is employed by
27 FITNESS CONNECTION starting on December 01, 2014 at the FITNESS CONNECTION located
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1 in the Houston, Texas as a General Manager. As a General Manager, Plaintiff regularly works in
2 excess of forty (40) hours per week and eight (8) hours per day, but fails to receive all minimum
3 wages, including all overtime compensation to which he is entitled for the hours worked in excess
4 of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff is asked to clock out for
5 lunch and asked to stay and still work while off the clock. Plaintiff is regularly required to have
6 actual hours worked corrected to show he worked less hours without signing in or out or any
7 documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff is also asked to
8 work on non scheduled days while off the clock and not receive any compensation for the hours he
9 actually worked.

12 19. Plaintiff, **HERMAN MCCORD**, is a resident of Grand Prairie, Texas, and was
13 employed by FITNESS CONNECTION from on or about April 1, 2015 to on or about October 16,
14 2015, at a FITNESS CONNECTION located in the State of Texas as an Assistant General Manager.
15 As an Assistant General Manager, Plaintiff regularly worked in excess of forty (40) hours per week
16 and eight (8) hours per day, but failed to receive all minimum wages, including all overtime
17 compensation to which he was entitled for the hours worked in excess of forty (40) hours per week
18 and/or eight (8) hours per day. Also Plaintiff was asked to clock out for lunch and asked to stay and
19 still work while off the clock. Plaintiff was regularly required to have actual hours worked corrected
20 to show he worked less hours without signing in or out or any documentation agreeing to the change
21 in actual hours worked by Plaintiff. Plaintiff was also asked to work on non scheduled days while
22 off the clock and not receive any compensation for the hours he actually worked.

26 20. Plaintiff, **IKE MILLER**, is a resident of Cary, North Carolina, and was employed
27 by FITNESS CONNECTION from on or about March 10, 2015 to on or about May 31, 2016, at a
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1 FITNESS CONNECTION located in the State of North Carolina as a General Manager. As a
2 General Manager, Plaintiff regularly worked in excess of forty (40) hours per week and eight (8)
3 hours per day, but failed to receive all minimum wages, including all overtime compensation to
4 which he was entitled for the hours worked in excess of forty (40) hours per week and/or eight (8)
5 hours per day. Plaintiff was regularly required to have actual hours worked corrected to show he
6 worked less hours without signing in or out or any documentation agreeing to the change in actual
7 hours worked by Plaintiff. Plaintiff was also asked to work on non scheduled days while off the
8 clock and not receive any compensation for the hours he actually worked. Plaintiff was made to work
9 on Saturdays and to call in to work on his days off and regularly clocked in 60 to 65 hours per week.
10
11

12 21. Plaintiff, **RANDY REYNA**, is a resident of Manvel, Texas, and was employed by
13 FITNESS CONNECTION from on or about January 1, 2016 to on or about June 15, 2016, at a
14 FITNESS CONNECTION located in the State of Texas as a Fitness Manager. As a Fitness
15 Manager, Plaintiff regularly worked in excess of forty (40) hours per week and eight (8) hours per
16 day, but failed to receive all minimum wages, including all overtime compensation to which he was
17 entitled for the hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.
18 Also Plaintiff was asked to clock out for lunch and asked to stay and still work while off the clock.
19 Plaintiff was regularly required to have actual hours worked corrected to show he worked less hours
20 without signing in or out or any documentation agreeing to the change in actual hours worked by
21 Plaintiff. Plaintiff was also asked to work on non scheduled days while off the clock and not receive
22 any compensation for the hours he actually worked.
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26 22. Plaintiff, **LADERRICK STILLS**, is a resident of Houston, Texas, and was employed
27 by FITNESS CONNECTION from on or about February 2105 to on or about November 2015, at a
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1 FITNESS CONNECTION located in the State of Texas as a General Manager. As a General
2 Manage, Plaintiff regularly worked in excess of forty (40) hours per week and eight (8) hours per
3 day, but failed to receive all minimum wages, including all overtime compensation to which he was
4 entitled for the hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.
5 Also Plaintiff was asked to clock out for lunch and asked to stay and still work while off the clock.
6 Plaintiff was regularly required to have actual hours worked corrected to show he worked less hours
7 without signing in or out or any documentation agreeing to the change in actual hours worked by
8 Plaintiff. Plaintiff was also asked to work on non scheduled days while off the clock and not receive
9 any compensation for the hours he actually worked.

12 23. Plaintiff, **SUNSHINE THORNTON**, is a resident of Houston, Texas, and is
13 employed by FITNESS CONNECTION starting on or about April, 2014 at the FITNESS
14 CONNECTION located in Houston, Texas as a Fitness Director. As a Fitness Director, Plaintiff
15 regularly works in excess of forty (40) hours per week and eight (8) hours per day, but fails to receive
16 all minimum wages, including all overtime compensation to which she was entitled for the hours
17 worked in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff is asked
18 to clock out for lunch and asked to stay and still work while off the clock. Plaintiff is regularly
19 required to have actual hours worked corrected to show she worked less hours without signing in or
20 out or any documentation agreeing to the change in actual hours worked by Plaintiff. Plaintiff is also
21 asked to work on non scheduled days while off the clock and not receive any compensation for the
22 hours he actually worked.

26 24. Plaintiff, **WILLIAM VALK**, is a resident of Euless, Texas, and was employed by
27 FITNESS CONNECTION from on or about August, 2013 to on or about June, 2015, at a FITNESS
28

1 CONNECTION located in the State of Texas as a Fitness Director. As aa Fitness Director, Plaintiff
2 regularly worked in excess of forty (40) hours per week and eight (8) hours per day, but failed to
3 receive all minimum wages, including all overtime compensation to which he was entitled for the
4 hours worked in excess of forty (40) hours per week and/or eight (8) hours per day. Also Plaintiff
5 was asked to clock out for lunch and asked to stay and still work while off the clock. Plaintiff was
6 regularly required to have actual hours worked corrected to show he worked less hours without
7 signing in or out or any documentation agreeing to the change in actual hours worked by Plaintiff.
8 Plaintiff was also asked to work on non scheduled days while off the clock and not receive any
9 compensation for the hours he actually worked.

12 25. Plaintiff, **CANDACE WEAVER**, is a resident of Houston, Texas, and was
13 employed by FITNESS CONNECTION from on or about March, 2015 to on or about November,
14 2015, at a FITNESS CONNECTION located in the State of Texas as a Fitness Manager. As a Fitness
15 Manager, Plaintiff regularly worked in excess of forty (40) hours per week and eight (8) hours per
16 day, but failed to receive all minimum wages, including all overtime compensation to which she was
17 entitled for the hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.
18 Also Plaintiff was asked to clock out for lunch and asked to stay and still work while off the clock.
19 Plaintiff was regularly required to have actual hours worked corrected to show she worked less hours
20 without signing in or out or any documentation agreeing to the change in actual hours worked by
21 Plaintiff. Plaintiff was also asked to work on non scheduled days while off the clock and not receive
22 any compensation for the hours he actually worked.

26 26. Plaintiff, **JOHN YARBROUGH**, is a resident of Spring, Texas, and is employed by
27 FITNESS CONNECTION starting on or about May 15, 2014 at the FITNESS CONNECTION
28

1 located in Houston, Texas as a General Manager and/or Assistant General Manager. As a General
2 Manager and/or Assistant General Manager, Plaintiff regularly works in excess of forty (40) hours
3 per week and eight (8) hours per day, but fails to receive all minimum wages, including all overtime
4 compensation to which he is entitled for the hours worked in excess of forty (40) hours per week
5 and/or eight (8) hours per day. Also Plaintiff is asked to clock out for lunch and asked to stay and
6 still work while off the clock. Plaintiff is regularly required to have actual hours worked corrected
7 to show he worked less hours without signing in or out or any documentation agreeing to the change
8 in actual hours worked by Plaintiff. Plaintiff is also asked to work on non scheduled days while off
9 the clock and not receive any compensation for the hours he actually worked.
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11

12 **B. Defendants**

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14 27. Defendant, **FITNESS CONNECTION OPTION HOLDINGS, LLC**, is a foreign
15 Limited Liability Company incorporated in the State of Delaware and whose agent for service of
16 process is National Corporate Research, Ltd., 850 New Burton Road Suite 201, Dover, DE, 19904.
17

18 28. Defendant, **TITAN FITNESS, LLC**, is a domestic Limited Liability Company
19 incorporated in the State of Texas and whose agent for service of process is Steven Josh Hightower,
20 275 Mitchell Road, Lorena, TX 76655.

21 29. Defendant, **TITAN FITNESS-DUBLIN, LLC**, is a domestic Limited Liability
22 Company incorporated in the State of Texas and whose agent for service of process is Steven Josh
23 Hightower, 275 Mitchell Road, Lorena, TX 76655.
24

25 30. Defendant, **TITAN FITNESS-GBC, LLC**, is a domestic Limited Liability Company
26 incorporated in the State of Texas and whose agent for service of process is Steven Josh Hightower,
27 275 Mitchell Road, Lorena, TX 76655.
28

1 31. Defendant, **TITAN FITNESS-SA, LLC**, is a domestic Limited Liability Company
2 incorporated in the State of Texas and whose agent for service of process is Steven Josh Hightower,
3 275 Mitchell Road, Lorena, TX 76655.
4

5 32. Defendant, **TITAN FITNESS NC-CHARLOTTE, LLC**, is a foreign Limited
6 Liability Company incorporated in the State of North Carolina and whose agent for service of
7 process is Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211
8 E. 7th Street, Suite 620, Austin, TX 78701.
9

10 33. Defendant, **TITAN FITNESS HOLDINGS, LLC**, is a foreign Limited Liability
11 Company incorporated in the State of Virginia and whose agent for service of process is A.J.
12 Mushtaq. 8200 Greensboro Dr Ste 900, Mclean, VA 22102.
13

14 34. Defendant, **TITAN FITNESS TEXAS, LLC**, is a foreign Limited Liability
15 Company incorporated in the State of Virginia and whose agent for service of process is Corporation
16 Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620
17 Austin, TX 78701.
18

19 IV. FACTUAL ALLEGATIONS

20 35. Plaintiffs allege that at all times hereinafter mentioned, Defendants have been an
21 employer and enterprise engaged in commerce within the meaning of the FLSA. Defendants have
22 employees engaged in interstate commerce. Defendants have an annual gross volume of sales made
23 or business done of not less than \$500,000.00. In addition, at all times hereinafter mentioned,
24 Plaintiffs were engaged in commerce as required by 29 U.S.C. §§206-207.
25

26 36. Plaintiffs allege that the Defendants own and operate health and fitness facilities in
27 the State of Texas and the State of Kansas. Defendants either directly or indirectly hired Plaintiffs;
28

1 controlled Plaintiffs' work schedules and conditions of employment; determined the rates and
2 methods of payment of wages; encouraged, prepared or promoted policies and procedures regarding
3 overtime pay; and kept records regarding Plaintiffs' employment.
4

5 37. Plaintiffs are General Mangers, Assistant Managers, and/or Personal Trainers for
6 FITNESS CONNECTION. Plaintiffs' duties require and/or required them to sell FITNESS
7 CONNECTION membership packages and monitor their sales numbers in connection with monthly
8 sales goals.
9

10 38. Plaintiffs did not: (a) manage an enterprise or a recognized department or subdivision
11 of FITNESS CONNECTION's; (b) direct the work of two or more employees; (c) have the
12 authority to hire or fire other employees, nor were their suggestions and recommendations
13 concerning hiring, firing, advancement, promotion or any other change of status of other employees
14 given particular weight; (d) perform office or non-manual work directly related to the management
15 or general business operations of FITNESS CONNECTION's or FITNESS CONNECTION's
16 customers; (e) exercise discretion or independent judgment with respect to matters of significance;
17 or (f) customarily or regularly engage away from FITNESS CONNECTION's place or places of
18 business in performing their primary duty. Moreover, the regular rate of pay of the General
19 Managers, Assistant Managers, and/or Personal Trainers, including Plaintiffs, was not in excess of
20 one and one-half times the applicable minimum hourly rate. Based on these duties and
21 responsibilities, FITNESS CONNECTION's General Managers, Assistant Managers and/or Personal
22 Trainers are clearly not exempt from the requirements of the FLSA.
23
24
25

26 39. As General Managers, Assistant Managers and/or Personal Trainers, Plaintiffs
27 routinely worked in excess of 40 hours per week throughout their employment with FITNESS
28

1 CONNECTION. Specifically, FITNESS CONNECTION's General Managers, Assistant Managers
2 and/or Personal Trainers, including Plaintiffs, worked between 50 and 100 hours per work week,
3 depending on the time of the month and its proximity to the end of FITNESS CONNECTION's
4 monthly sales cycle and/or sales goals.

5
6 40. FITNESS CONNECTION's routinely required its General Managers, Assistant
7 Managers and/or Personal Trainers to clock out and continue to work off of the clock and/or to
8 falsify their time records to erroneously reflect that the General Managers, Assistant Managers and/or
9 Personal Trainers worked less than they actually did. Defendants also required General Managers,
10 Assistant Managers and/or Personal Trainers to work off of the clock or sign false time cards which
11 was and is a common policy or scheme encouraged by the Defendants. The Defendants either knew
12 or should have known that its General Managers, Assistant Managers and/or Personal Trainers were
13 and still are working off the clock and not being paid appropriate overtime rates. As a result of the
14 Defendants' unlawful compensation policy/scheme, it wrongfully denied General Managers,
15 Assistant Managers and/or Personal Trainers of hundreds of thousands of dollars of statutory-
16 required overtime.
17
18
19

20 41. FITNESS CONNECTION's acts violate the FLSA, which prohibits the denial of
21 payment of minimum wage for all hours worked and prohibits the denial of overtime compensation
22 for hours worked in excess of forty per work week. As described above, the Defendants' willfully
23 violated Plaintiffs' right to minimum wage and overtime compensation guaranteed under the FLSA.
24

25 **V. COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA**

26 42. Plaintiffs bring their Claim for Relief for Violation of the FLSA as an "opt-in"
27 collective action pursuant to Section 16(b) of the FLSA (29 U.S.C. § 216(b)), on behalf of all person
28

1 who were, are, or will be employed by Defendant, FITNESS CONNECTION, as General Managers,
2 Assistant General Managers, and Personal Trainers throughout the United States, at any time within
3 the applicable statute of limitations period, who have not been compensated for all minimum wages
4 and at one and one-half the regular rate of pay for all work performed in excess of forty (40) hours
5 per week.
6

7 43. Questions of law and fact common to the FLSA Collective Members as a whole
8 include, but are not limited to, the following:
9

10 a. Whether FITNESS CONNECTION unlawfully failed and continues to fail
11 to pay minimum wages and overtime compensation in violation of the FLSA; 29 U.S.C. §§201, et
12 seq.
13

14 b. Whether FITNESS CONNECTION's failure to pay overtime to its non-exempt
15 FLSA Collective Plaintiffs was willful within the meaning of the FLSA;
16

17 c. Whether FITNESS CONNECTION failed and continues to fail to maintain
18 accurate records of actual time worked by the FLSA Collective Members and prospective FLSA
19 Collective Members;
20

21 d. Whether FITNESS CONNECTION failed and continues to fail to record or
22 report all time worked by the FLSA Collective Plaintiffs and prospective FLSA Collective Members.
23

24 e. Whether FITNESS CONNECTION failed and continues to fail to provide
25 accurate wage statements itemizing all actual time worked and wages earned by the FLSA Collective
26 Plaintiffs and prospective FLSA Collective Members.
27

28 44. Plaintiffs and FLSA Collective Members are similarly situated, have substantially
similar job requirements and pay provisions, and are subject to the Defendants' common practice,

1 policy or plan of refusing to pay overtime in violation of the FLSA and unlawfully characterizing
2 certain FLSA Collective Plaintiffs and FLSA Collective Members as exempt employees.

3
4 45. Plaintiff's Claims for Relief for violations of the FLSA may be brought and
5 maintained as an "opt-in" collective action pursuant to Section 16(b) of the FLSA, for all claims
6 asserted by the Plaintiffs and the FLSA Collective Members (FLSA claims), because the claims of
7 the Plaintiffs are similar to the claims of the members of the prospective FLSA Collective Members.

8
9 46. While the exact number of FLSA Collective Members is unknown to Plaintiffs at the
10 present time, based on information and belief, there are more than 500 such persons. Thus, a
11 collective action is the most efficient mechanism for resolution of the FLSA Collective Members'
12 claims.

13
14 47. The FLSA Collective Members, on behalf of whom Plaintiffs bring this "opt-in"
15 collective action, are similarly situated because they have been or are employed in the same or
16 similar position as individually-named Plaintiffs and were subject to the same or similar unlawful
17 practices as the individually-named Plaintiffs, as described above. The number and identity of other
18 Plaintiffs yet to opt-in and consent to be a Plaintiff may be determined from the records of FITNESS
19 CONNECTION, and potential Plaintiffs may be notified of the pendency of this action utilizing the
20 payroll records of FITNESS CONNECTION. At all times during the FLSA Collective Period, all
21 of the FLSA Collective Members were employed in the same or similar job as the Plaintiffs and were
22 paid in the same manner and under the same standard employment procedures and practices as the
23 Plaintiffs.

24
25
26 48. During the FLSA Collective Period, Defendants were fully aware that the primary
27 duties of Plaintiffs and the FLSA Collective Members were inconsistent with exempt status, and
28

1 that the FLSA Collective Members were and are not exempt from the overtime provisions of the
2 FLSA.

3
4 49. The Defendants' violations of 29 U.S.C. §207(a) were repeated, willful and
5 intentional.

6 50. The Plaintiffs and the FLSA Collective Members have been damaged by said
7 violations of 29 U.S.C. §207(a).

8
9 51. Pursuant to 29 U.S.C. §207(a) and §216(b), Defendants are liable to the Plaintiffs and
10 the FLSA Collective Members for the full amount of all their unpaid wages, including, overtime
11 compensation, plus an additional equal amount as liquidated damages, plus the attorneys fees and
12 costs of the Plaintiffs and FLSA Collective Members who affirmatively “opt-in” to this collective
13 action.

14
15 52. In addition, an action under 29 U.S.C. §216(b) is superior to other available methods
16 for the fair and efficient adjudication of this controversy since the damages suffered by individual
17 members of the FLSA Collective Action may be relatively small, and the expense and burden of
18 individual trials would make it impossible for such FLSA Collective Members to individually
19 redress the wrongs done to them.

20
21 53. Moreover, because of the similarity of the FLSA Collective Members' claims,
22 individual actions would present the risk of inconsistent adjudications subjecting both employees
23 and Defendants to incompatible standards of conduct.

24
25 54. Plaintiffs are currently unaware of the identities of all the FLSA Collective Members.
26 Accordingly, Defendants should be required to provide to Plaintiffs a list of all persons employed
27 by Defendants as General Managers, Assistant General Managers, and Personal Trainers.
28

V. CAUSES OF ACTION

FLSA CLAIM FOR RELIEF

**[Against Defendant FITNESS CONNECTION]
(FLSA Claims, 29 U.S.C. §§201, *et seq.*,
Brought by All Plaintiffs on Behalf of Themselves and All FLSA Collective Members)**

55. Plaintiffs re-allege and incorporate by reference herein each and every allegation set forth in the preceding paragraphs

56. At all relevant times, FITNESS CONNECTION has been, and continues to be, an "employer" engaged in interstate "commerce" within the meaning of the FLSA, 29 U.S.C. §203. At all relevant times, FITNESS CONNECTION has employed, and continues to employ "employee[s]," including the Plaintiffs and each of the FLSA Collective Members.

57. Defendants operate and at all times during the liability period has operated health and fitness clubs in the States of Texas and Kansas.

58. Each of the named Plaintiffs consent to sue in this action pursuant to section 16(b) of the FLSA, 29 U.S.C. §216(b). Additional potential FLSA Collective Members may execute and file forms consenting to "opt in" and joining as Plaintiffs in this collective action.

59. The FLSA requires each covered employer, such as the Defendants to compensate each of its non-exempt employees at a rate of not less than one and one-half the regular rate of pay for work performed in excess of forty (40) hours in a work week.

60. The Defendants have employed and continue to employ numerous General Managers, Assistant General Managers, and Personal Trainers, including Plaintiffs, to operate their health and fitness clubs.

61. Plaintiffs and FLSA Collective Members are not exempt from the right to receive

1 minimum wages and overtime pay under the FLSA and are not exempt from the requirement that
2 the Defendants pay them overtime compensation under the FLSA. The FLSA Plaintiffs and FLSA
3 Collective Members are entitled to be paid overtime compensation for all overtime hours worked.
4

5 62. At all relevant times, the Defendants had a policy and practice of failing and refusing
6 to pay both minimum wages and overtime pay to its General Managers, Assistant General Managers,
7 and Personal Trainers for their hours worked in excess of forty (40) hours per week. The
8 Defendants' policy included the failure to provide and/or calculate and/or maintain records of any
9 overtime pay for all overtime hours actually worked according to Federal and State law.
10

11 63. As a result of the Defendants' failure to compensate its General Managers, Assistant
12 General Managers, and Personal Trainers, including the Plaintiffs and FLSA Collective Members,
13 for all minimum wages for hours worked and overtime wages for work performed in excess of 40
14 hours in a work week, the Defendants has violated and continues to violate, the FLSA, including 29
15 U.S.C. §§207(a)(1) and 215(a).
16

17 64. As a result of the Defendants' failure to record, report, credit, and/or compensate its
18 General Managers, Assistant General Managers, and Personal Trainers , including Plaintiffs and
19 FLSA Collective Members, the Defendants has failed to make, keep and preserve records with
20 respect to each of its employees sufficient to determine the wages, hours and other conditions and
21 practices of employment in violation of the FLSA, including 29 U.S.C. §§211© and 215(a).
22
23

24 65. The foregoing conduct, as alleged, constitute a willful violation of the FLSA within
25 the meaning of 29 U.S.C. §255(a).

26 66. Plaintiffs, on behalf of themselves and FLSA Collective Members, seek damages in
27 the amount of their respective unpaid overtime compensation, plus liquidated damages, as provided
28

1 by the FLSA, 19 U.S.C. §216(b), and such other legal and equitable relief as the Court deems just
2 and proper.

3
4 67. Plaintiffs, on behalf of themselves and FLSA Collective Members, seek recovery of
5 their attorneys' fees and costs of bringing this action to be paid for by the Defendants as provided
6 by the FLSA, 29 U.S.C. §216(b).

7
8 **VII. DEMAND FOR JURY TRIAL**

9 68. Plaintiffs hereby demand a jury trial on all causes of action allowed by law.

10 **VIII. PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiffs, **WESLEY ARCENEUX, SAMUEL BARNHARDT, ADAM**
12 **BELLINGER, RAMIRO BERONES, JOSE BENITEZ, ETHAN CALLAHAN, DAMON**
13 **HODGE, WILLIS HOLMAN, DWAYNE JONES, HERMAN MCCORD, IKE MILLER,**
14 **RANDY REYNA, LADERRICK STILLS, SUNSHINE THORNTON, WILLIAM VALK,**
15 **CANDACE WEAVER, AND JOHN YARBROUGH**, on behalf of themselves and all members
16 similarly situated pray for relief as follows:
17

18
19 A. Designation of this action as a collective action on behalf of the proposed FLSA
20 Collective Members asserting FLSA claims, and prompt issuance of notice pursuant to 29 U.S.C.
21 §216(b) to all similarly situated members of the FLSA Opt-In action, apprizing them of the
22 pendency of this action, and permitting them to assert timely FLSA claims in this action by filing
23 individual Consent to Sue forms pursuant to 29 U.S.C. §216(b), and a tolling of the statute of
24 limitations on the FLSA Collective Members' claims until the FLSA Collective Members are
25 provided with reasonable notice of the pendency of this action and a fair opportunity to exercise their
26 right to Opt-in as Plaintiffs;
27
28

1 B. Designation of Plaintiffs, **WESLEY ARCENEUX, SAMUEL BARNHARDT,**
2 **ADAM BELLINGER, RAMIRO BERONES, JOSE BENITEZ, ETHAN CALLAHAN,**
3 **DAMON HODGE, WILLIS HOLMAN, DWAYNE JONES, HERMAN MCCORD, IKE**
4 **MILLER, RANDY REYNA, LADERRICK STILLS, SUNSHINE THORNTON, WILLIAM**
5 **VALK, CANDACE WEAVER, AND JOHN YARBROUGH,** as representatives of the FLSA
6 Collective Members;
7

8 C. A declaratory judgment that the practices complained of herein are unlawful under
9 the Fair Labor Standards Act, 29 U.S.C §§201, et seq.;

10 D. An injunction against FITNESS CONNECTION and its officers, agents, successors,
11 employees, representatives, and any and all persons acting in concert with it, as provided by law,
12 from engaging in each of the unlawful practices, policies and patterns set forth herein;
13

14 E. An award of damages, including liquidated and exemplary damages and waiting time
15 penalties and other statutory penalties to be paid by FITNESS CONNECTION;
16

17 F. Costs of action incurred herein, including reasonable attorneys' fees, expert fees and
18 litigation expenses;
19

20 G. Pre-Judgment and post-Judgment interest, as provided by law;

21 H. Any and all other and further legal and equitable relief as this Court deems necessary,
22 just and proper; and
23

24 I. Plaintiffs pray for a jury trial on all causes of action allowed by law.
25
26
27
28

BY: /s/ *Richard C. Dalton*

ATTORNEY FOR PLAINTIFFS